

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

AHADU TADESSE,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324b Proceeding
)	OCAHO Case No. 97B00118
)	
UNITED STATES POSTAL)	
SERVICE,)	
Respondent.)	

**ORDER OF INQUIRY TO THE OFFICE OF SPECIAL COUNSEL
(OSC) AND RESPONDENT AND INVITATION TO OSC TO
COMMENT AND INTERVENE
(October 21, 1997)**

1. Procedural History

On November 11, 1996, Ahadu Tadesse (Tadesse or Complainant), a work-authorized alien,¹ filed a Charge with the United States Department of Justice, Office of Special Counsel for Unfair Immigration-Related Employment Practices (OSC). Tadesse alleged that the United States Postal Service had discriminated against him and committed document abuse on October 15, 1996, by refusing to accept as proof of eligibility to work in the United States (1) “the I-551 stamp on . . . [his] passport” and “the receipt from Immigration & Naturalization Service for the Replacement of . . . [his] registration card.” Tadesse claimed that:

They insisted that I will not be hired unless I bring the plastic alien registration card. The confirmation by Immigration Officer here about my status did not help.

OSC Charge at ¶ 9.

By letter dated March 18, 1997, OSC informed Tadesse that “there is not reasonable cause to believe the charge is true” but that he had the right to file a private action with the Office of the Chief Administrative Hearing Officer (OCAHO) within ninety (90) days.

On June 4, 1997, Tadesse filed an OCAHO Complaint. He identifies himself as a citizen

¹Alien Registration No. 44895084.

of Ethiopia, who obtained permanent resident status on December 7, 1995. Tadesse alleges that the St. Paul, MN, branch of the United States Postal Service discriminated against him on October 15, 1996, when it refused to hire him because of his citizenship status and national origin. Tadesse alleges document abuse on the basis of the Postal Service's refusal to accept the I-551 passport stamp, and a receipt from the INS confirming that he had applied for a replacement alien registration card. On June 17, 1997, OCAHO issued a Notice of Hearing.

On July 25, 1997, the Postal Service filed its Answer, admitting that Tadesse "was not hired because he did not produce a Form I-551 indicating permanent resident status" and that the person "who disqualified the Complainant erred." However, the Postal Service interposes as an Affirmative Defense the lack of "intentional discrimination."

This case poses a question of first impression in OCAHO jurisprudence: what constitutes "intent" under 8 U.S.C. § 1324b(a)(1), as revised by Pub. L. No. 104-208, 110 Stat. 3009, at *3009-670, § 421, effective September 30, 1996? Both OSC and Respondent are asked to brief this issue.

2. Order

Not later than **December 1, 1997**, Respondent is directed to brief the issue as stated, *i.e.*: "Under **revised** 8 U.S.C. § 1324b(a)(1), what constitutes '**for the purpose** or **with the intent of discriminating**'?" At this stage in the emerging jurisprudence under 8 U.S.C. § 1324b(a)(1) as amended, OSC can assist the forum by providing its understanding of the impact of the revised statute on the meaning of "**for the purpose**" and "**with the intent of discriminating**." To that end, **I invite OSC to move to file, either as *amicus curiae* or party intervenor, a memorandum of points and authorities on this issue, with substantive commentary, by December 1, 1997.** Complainant may also file comments by **December 1, 1997**. Both OSC and the parties are asked to address the intent standard in the context of OCAHO caselaw interpretations under the predecessor statute, with particular attention to the revised statute's legislative history, and specific reference to Senator Alan K. Simpson's April 30, 1996 remarks during the Senate debate.²

SO ORDERED.

Dated and entered this 21st day of October, 1997.

Marvin H. Morse
Administrative Law Judge

²See 142 CONG. REC. S4401-01, S4410-S4412 (daily ed. Apr. 30, 1996) (statement of Sen. Simpson).

CERTIFICATE OF SERVICE

I hereby certify that copies of the attached Order of Inquiry to the Office of Special Counsel (OSC) and Respondent and Invitation to OSC to Comment and Intervene, were mailed first class this 21st day of October 1997 addressed as follows:

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